

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TRACEY SMITH,)
vs. Plaintiff,)
COMMISSIONER of SOCIAL SECURITY,) Civil No. 18-cv-1359-RJD
Defendant.)
vs.

ORDER for ATTORNEY'S FEES

DALY, Magistrate Judge:

This matter is before the Court on Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 206(b). (Doc. 31).

After this Court reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g), the Commissioner granted Plaintiff's application for benefits. The fee agreement between Plaintiff and her attorney (Doc. 31-5) provided for a fee of 25% of Plaintiff's past-due benefits. Plaintiff was found to be entitled to disability benefits beginning in April 2013, and the amount of past-due benefits is \$74,904.00. The Commissioner withheld 25% of that amount (\$18,726.00) for attorney's fees, subject to court approval. (Doc. 31-4).

42 U.S.C. § 406(b)(1)(A) provides that the Court may allow a "reasonable fee," not in excess of 25% of the total of the past-due benefits. However, if the Court approves such a fee, "no other fee may be payable or certified for payment for such representation except as provided in this paragraph." *Ibid.* In practical terms, this means that, when a fee is awarded under § 406(b)(1), counsel must refund any amount previously awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B). Here, the Court awarded an EAJA fee in the amount of \$4,301.25. (Doc. 30).

The Supreme Court has held that § 406(b)(1) controls, but does not displace, contingent fee agreement in social security cases:

Most plausibly read, we conclude, § 406(b) does not displace contingent-fee agreements as the primary means by which fees are set for successfully representing Social Security benefits claimants in court. Rather, § 406(b) calls for court review of such arrangements as an independent check, to assure that they yield reasonable results in particular cases.

Gisbrecht v. Barnhart, 535 U.S. 789, 807 (2002).

Having reviewed the circumstances presented here, including the time and effort expended by counsel, the excellent result received by Plaintiff, the amount of the past-due benefits and the value of the projected benefits, the Court concludes that \$18,726.00 is a reasonable fee.

While the Commissioner has no direct stake in the § 406(b)(1) fee request, he “plays a part in the fee determination resembling that of a trustee for the claimants.” *Gisbrecht*, 535 U.S. at 798, n. 6. The Commissioner has filed a response indicating he does not oppose the fee request. (Doc. 33).

Wherefore, Plaintiff’s Attorney’s Motion for an Award of Attorney Fees (**Doc. 31**) is **GRANTED**. The Court awards Plaintiff’s counsel James Pavisian a fee of \$18,726.00 (eighteen thousand, seven hundred and twenty-six dollars), to be paid by the agency from the past-due benefits. Upon receipt, counsel shall refund to Plaintiff the amount of the EAJA fee.

IT IS SO ORDERED.

DATED: October 6, 2020.

s/ Reona J. Daly
REONA J. DALY
UNITED STATES MAGISTRATE JUDGE